



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

March 15, 1994
AO-94-09

Melvin A. Kleckner, Town Administrator
Town of Belmont
Town Hall
455 Concord Avenue
Belmont, MA 02178

RE: Use of Municipal Resources to Influence a Ballot Question

Dear Mr. Kleckner:

This letter is in response to your March 8, 1994, letter requesting an advisory opinion regarding the use of municipal resources in order to disseminate information concerning an upcoming ballot question. The ballot questions, slated for April of 1994, will ask the voters to approve a debt exclusion and a civil service personnel issue.

You have stated that the Belmont Board of Selectmen has discussed various activities designed to communicate their support for these ballot questions. These activities include a proposal to produce and mail to all registered voters of the town a letter or brochure explaining the questions and documenting their merits. You have further stated that the production of such a letter would involve printing and mailing costs and staff time. I assume for the purpose of this opinion that the printing and mailing costs would come from the town treasury and staff time would involve the use of public employees working during normal work hours.

You have asked that I answer three specific questions. I will answer them in order.

1) May the Board of Selectmen or any other Town entity expend resources in order to influence the outcome of a question which appears on a Town election ballot?

No. According to the decision in Anderson v. City of Boston, 376 Mass. 178 (1978) "... a municipality has no authority to appropriate funds for the purpose of taking action to influence the result of a [ballot question] proposed to be submitted to the people..." Anderson, at 183. Since the action which the Board of Selectmen is considering constitutes an attempt to influence the outcome of a ballot question,

and would involve the use of public resources¹, such activity would be prohibited under Anderson.

2) In this context, are there any differences between Proposition 2 1/2 referendum questions and other questions which may appear on a local election ballot?

There is no difference between a Proposition 2 1/2 referendum question and other questions which may appear on a local election ballot. Any question which appears on a ballot at a city, town or state election is considered a "question submitted to the voters." As such, activities promoting, opposing or otherwise seeking to influence these ballot questions are regulated by the campaign finance law and, inter alia, subject to the prohibition against the use of public resources to influence their passage or defeat.

3) If no to the above [questions], may the Board of Selectmen expend resources in order to produce objective materials designed to educate the electorate on subjects which appear on the Town election ballot?

No. The dissemination of educational or informational material in regard to a ballot question is also addressed in OCPF IB-91-01. As mentioned previously, the Anderson opinion holds that the campaign finance law precludes the use of governmental resources to oppose or promote a ballot question. In addition, the Secretary of State's Elections Division has concluded for similar reasons that the Election Laws in general prohibit the dissemination of even truly educational or informational material to voters unless expressly authorized by statute. See also Elections Division Memorandum, July 26, 1991. Further, in our experience we have rarely concluded that material prepared by one side on a ballot question has been truly objective rather than advocacy in nature.

Finally, I would note that public officials, including town selectmen, are not prevented from preparing factual analyses and other information which deals with the subject matter of a ballot question, or from distributing such information in a limited manner to staff and other relevant public officials. However, they may use public resources to prepare such analyses only for legitimate public policy reasons and not for political purposes. Under no circumstances may public officials disseminate such material to voters or a class of voters absent express statutory authorization.

In conclusion, whether material is truly objective voter information or one-sided advocacy propaganda, such material may not be prepared and distributed using governmental resources without violating either the campaign finance laws or other state election laws unless such distribution is authorized by statute.

¹. Public resources would include any "governmental resources" whatsoever including personnel, paper, stationery and other supplies, offices, meeting rooms, copiers, computers, or fax machines. See Anderson, at 200 and OCPF IB-91-01.

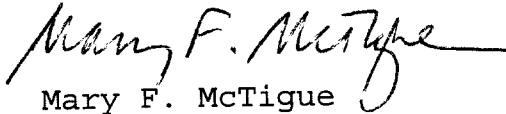
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For your information, I have enclosed a copy of OCPF IB-91-01 and the Elections Division Memorandum.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,


Mary F. McTigue
Director

MFm/cp
Enclosures